

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

FILED
U.S. DISTRICT COURT
SAVANNAH DIV.

2009 APR 13 AM 10:40

CLERK *Mr. Smith*
SO. DIST. OF GA.

DONALD BERNARD WHITAKER,)
)
 Petitioner,)
)
v.) CASE NO. CV408-065
)
UNITED STATES OF AMERICA,)
)
 Respondent.)

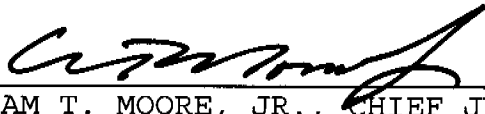
O R D E R

Before the Court is the Magistrate Judge's Report and Recommendation (Doc. 8), to which objections have been filed (Doc. 10). After a careful de novo review, the Court concurs with the Magistrate Judge's Report and Recommendation. Accordingly, the Report and Recommendation is **ADOPTED** as the Opinion of this Court. The § 2255 Petition is **DENIED**. The **Clerk of Court** is **DIRECTED** to close this case.

In his Objection to the Report and Recommendation, Petitioner contends that he can show prejudice by aggregating certain ineffective assistance of counsel claims. (Doc. 10.) The Magistrate Judge's reasoning in the Report and Recommendation with respect to prejudice serves to show that Petitioner cannot satisfy the prejudice prong of the analysis with respect to any individual claim, and is in this respect sound. (Doc. 8.) However, accepting Petitioners allegations as

true and subtracting the sum total of the contested criminal history points, Petitioner is correct that his criminal history category would be reduced from V to VI. Of course, for this argument to be successful, Petitioner would need to be able to prove the first prong of Strickland on multiple claims in this case. As the Magistrate Judge correctly found, not only is Petitioner unable to meet prong one with respect to multiple claims in this case, he is unable to prove prong one with respect to any claims in this case. (Doc. 8.) Therefore, the Objections to the Report and Recommendation are **DISMISSED**.

SO ORDERED this 13th day of April, 2009.



WILLIAM T. MOORE, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA